

Local Lodge 724 of the International Association of Machinists and Aerospace Workers, AFL-CIO and Holt Cargo Systems, Inc.

International Longshoremen's Association, Local 1291, AFL-CIO and Holt Cargo Systems, Inc.
Cases 4-CD-818-1 and 4-CD-818-2

July 20, 1992

DECISION AND DETERMINATION OF DISPUTE

BY MEMBERS DEVANEY, OVIATT, AND
RAUDABAUGH

The charges in this Section 10(k) proceeding were filed October 3, 1991, by Holt Cargo Systems, Inc. (Holt), alleging that the Respondents, Local Lodge 724 of the International Association of Machinists and Aerospace Workers, AFL-CIO (Local 724 IAM) and International Longshoremen's Association, Local 1291, AFL-CIO (Local 1291 ILA), violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing Holt to assign certain work to employees represented by one union rather than to employees represented by the other union.¹ A hearing was held January 2 and 3, 1992, before Hearing Officer Bruce G. Conley. Holt, Local 724 IAM, and Local 1291 ILA filed briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

Holt is a Delaware corporation which provides transportation, warehousing, and stevedoring services to steamship lines at various piers in the Port of Philadelphia. During the 12 months preceding the hearing, Holt derived gross revenues in excess of \$1 million and purchased and received goods valued in excess of \$50,000 directly from points outside Pennsylvania. The parties stipulated, and we find, that Holt is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that Local 724 IAM and Local 1291 ILA are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. Background and Facts of Dispute

Before April 1989, Delaware River Stevedores, Inc. (DRS) operated the Packer Avenue Marine Terminal in

the Port of Philadelphia. DRS assigned the work of maintaining and repairing chassis and containers at the Packer terminal to employees represented by Local 724 IAM.² In April 1989, Holt began operating the Packer terminal under a lease with the Philadelphia Regional Port Authority (PRPA). Holt, like DRS, assigned the Packer terminal chassis and container maintenance and repair work to employees represented by Local 724 IAM. This assignment was consistent with Holt's practice at its nearby Gloucester, New Jersey terminal of assigning the work to its Local 724 IAM-represented employees.³

In a 1991 10(k) proceeding, employees represented by Local 724 IAM were awarded the work of repairing and maintaining mechanical equipment at the Packer terminal, over employees represented by Local 1291 ILA.⁴ This 1991 jurisdictional award expressly excluded the Packer terminal maintenance and repair work here in dispute.⁵

Holt has been a party to successive collective-bargaining agreements with Local 724 IAM, including contracts from April 1, 1988, to October 1, 1991, and from October 1, 1991, to October 1, 1995. Holt is also a member of the Philadelphia Marine Trade Association (PMTA), a multiemployer bargaining association, which has a December 1, 1990, to September 30, 1994 collective-bargaining contract with Local 1291 ILA. The ILA and its various locals are party to a "Master Agreement" with an association of steamship lines (the Carriers Container Council (CCC)) and various stevedores and terminal operators. The relevant Master Agreement is in effect from December 1, 1990, to September 30, 1994.

Before January 1991, Packer was an "open terminal": steamship lines could employ any stevedore company to service their ships. In practice, however, the steamship lines used Holt's IAM-represented machinists. In January 1991, pursuant to Holt's amended lease with the PRPA, Packer became a "closed pier" and Holt assumed control over the assignment of stevedoring services.

In March 1991, Holt began transferring its container operation—including maintenance and repair work—from Gloucester City to the Packer terminal. On May 24, 1991, Local 1291 ILA filed a grievance under the Master Agreement against four steamship lines using the Packer terminal: ABC Container NV, ACT Pace

²See *Machinists Local 724 (Delaware Stevedores)*, 297 NLRB 1076 (1990).

³In a jurisdictional dispute over maintenance and repair of, inter alia, chassis and containers at Gloucester City, the Board awarded this work to employees represented by Local 724 IAM rather than by Local 1291 ILA. *Teamsters Local 158 (Holt Cargo)*, 293 NLRB 917 (1989).

⁴*Longshoremen ILA Local 1291 (Holt Cargo)*, 301 NLRB 394 (1991).

⁵*Id.* at 395 fn. 4.

¹The Employer additionally filed an 8(b)(4)(B) charge against Local 1291 ILA in Case 4-CC-1950-2. A hearing on that charge was held on February 11, 1992.

Line (renamed Blue Star Line), Columbus Line, and Maersk Container Service Company. The grievance alleged that these steamship lines—all CCC members—breached the Master Agreement by failing to honor the ILA's jurisdiction over the maintenance and repair of chassis and containers at the Packer terminal.⁶ The grievance stated that this maintenance and repair work must be performed by Local 1291 ILA personnel.

When Local 724 IAM learned of Local 1291 ILA's grievance, it wrote Holt on May 30, 1991, demanding the container and chassis maintenance and repair work at Packer, and threatening to take "whatever action it deems necessary, including economic action, to protect its membership and its jurisdiction." Local 724 repeated its demand and threat in an October 1, 1991 letter to Holt.

B. Work in Dispute

The disputed work involves the maintenance and repair of chassis and containers at the Packer Avenue Marine Terminal in Philadelphia, Pennsylvania.⁷

C. Contentions of the Parties

1. Local 1291 ILA

Local 1291 ILA argues that the notice of 10(k) hearing should be quashed because there are not two groups of employees claiming disputed work. *Longshoremen ILA Local 62-B v. NLRB*, 781 F.2d 919, 922 (D.C. Cir. 1986). Local 1291 ILA asserts that it made no demand of Holt for the work; it merely instituted and pursued contractual remedies against various steamship lines that are bound to the Master Agreement. Cf. *Laborers Local 731 (Slattery Associates)*, 298 NLRB 787 (1990).⁸ Local 1291 ILA further contends that it has not engaged in conduct against either the Employer or the steamship lines that is "coercive" under Section 8(b)(4)(D).

Local 1291 ILA further argues that the Board should adopt the reasoning of Chairman Stephens in his *Slattery Associates* dissent and exclude from 10(k) proceedings efforts by unions to pursue lawful contractual claims. Finally, Local 1291 ILA contends that Local 724 IAM's May 30 and October 1, 1991 letters to Holt were shams, designed to support the 8(b)(4)(D) charges.

⁶The grievance deadlocked before the Master Agreement's bipartite Industry Hearing Committee and Industry Appellate Committee. It was subsequently set for arbitration on January 23 and March 23, 1992.

⁷As discussed, *infra*, Local 1291 ILA argues that there is no work in dispute because it did not demand this work from Holt.

⁸Local 1291 ILA argues that *Slattery Associates*, *supra*, is distinguishable because there the union filed a grievance and claimed the disputed work from the employer assigning it. Here, however, Local 1291 ILA made no demand of Holt.

Local 1291 ILA takes no position on the work-assignment issue.

2. Local 724 IAM

Local 724 IAM argues that the ultimate object of Local 1291 ILA's grievance is to have Holt reassign the disputed maintenance and repair work to the ILA. Local 724 IAM further contends that its own threats to shut down Holt's operations if the disputed work was reassigned constitute reasonable cause to believe that Section 8(b)(4)(D) was violated. *New York Typographical Union (New York News)*, 252 NLRB 553 (1980).

On the merits of the dispute, Local 724 IAM contends that employees it represents should be awarded the disputed work on the basis of employer preference, collective-bargaining agreements, economy and efficiency of operations, employer past practice, area practice, relative skills, and gain or loss of employment.

3. Holt

Holt argues that Local 1291 ILA's grievance necessarily seeks reassignment of the disputed work. Because Packer is a closed pier, Holt contends that the only way that the steamship lines can comply with Local 1291 ILA's demand—and remain at Packer—is to pressure Holt to reassign the work. Thus, according to Holt, at least one motive for the ILA grievance is unlawful. *NLRB v. Local 825 Operating Engineers (Burns & Roe, Inc.)*, 400 U.S. 297 (1971).

Holt further contends that the Local 1291 ILA grievance is "coercive" because: (1) it is not "arguably meritorious" under the Master Agreement; (2) it has an improper, assignment-coercive motive; and (3) it is in derogation of an existing 10(k) award.⁹ *Longshoremen ILWU Local 7 (Georgia-Pacific)*, 291 NLRB 89 (1988). Holt argues that Local 724 IAM similarly engaged in coercive conduct by threatening economic action. *Teamsters Local 158 (Holt Cargo)*, *supra*, 293 NLRB 917, 989; *Longshoremen ILA Local 1291 (Holt Cargo)*, 301 NLRB 394, 395 (1991). It is immaterial, argues Holt, that Local 724 IAM's threats were prompted by Local 1291 ILA's grievance. See generally *Laborers Local 731 (Slattery Associates)*, *supra*; *Plumbers Local 612 (Mechanical, Inc.)*, 298 NLRB 793 (1990).

On the merits, Holt argues that the disputed work should be assigned to its 724 IAM-represented employees on the bases of certification and collective-bargaining agreements, efficiency and economy of oper-

⁹The Employer argues that Local 1291's grievance seeks the same work, performed by the same employees, that was awarded Local 724-represented employees in the Gloucester City case. *Teamsters Local 158 (Holt Cargo)*, *supra*. The only difference, according to the Employer, is that the work is now physically performed at the Packer terminal.

ations, relative skills and safety, area and industry practice, employer practice and preference, and gain or loss of employment.

D. Applicability of the Statute

Before the Board may proceed with a determination of a dispute under Section 10(k) of the Act, it must be satisfied that: (1) there are competing claims for work; (2) there is reasonable cause to believe that Section 8(b)(4)(D) has been violated; and (3) the parties have not agreed on a method for the voluntary adjustment of the dispute.

Initially, we find that there are competing claims for the Packer terminal chassis and container maintenance and repair work. Local 724 IAM expressly demanded this work in its May 30 and October 1, 1991 letters to Holt. Local 1291 ILA similarly claimed the work in its May 24 grievance against the shipping lines.¹⁰ The fact that Local 1291 ILA did not additionally seek the work from the Employer does not warrant a different result. See, e.g., *Iron Workers Local 3 (Spancrete Northeast)*, 298 NLRB 800 (1990); *Bricklayers (Sesco, Inc.)*, 303 NLRB 401 (1991).

There is also reasonable cause to believe that Section 8(b)(4)(D) has been violated. Local 724 IAM's letters to Holt threatening "economic action" satisfy the reasonable cause requirement.¹¹ Moreover, there is no evidence to support Local 1291 ILA's assertions that Local 724's threats were not genuine.¹² Under

¹⁰ See, e.g., *Laborers Local 731 (Slattery Associates)*, supra, 298 NLRB 787; *Laborers (O'Connell's Sons)*, 288 NLRB 53, 54 (1988); *Sheet Metal Workers Local 107 (Lathrop Co.)*, 276 NLRB 1200, 1202 (1985).

Member Oviatt notes that this factual situation is distinguishable from that presented in *Laborers Local 731 (Slattery Associates)*. There the question presented involved whether in a construction industry setting a claim to enforce a contractual subcontracting clause is a claim for work assignment under Sec. 8(b)(4)(D). Here the case involves claims made against third parties to have them pressure Holt to assign the disputed work to the ILA. Clearly the cases and questions presented are distinguishable.

Member Raudabaugh agrees that this case is distinguishable from *Slattery*. In that case, the union filed a grievance against a general contractor in the construction industry, alleging a breach of an agreement to subcontract only to union signatories. The clause was lawful under the construction industry proviso to Sec. 8(e), and the grievance sought only monetary damages. Notwithstanding this, the Board found reasonable cause to believe that the grievance constituted a claim for work.

The instant case does not involve the construction industry, and the grievance is not limited to seeking damages. Rather, the grievance seeks the assignment of the work, presumably by having the shipping companies place pressure on Holt. Accordingly, without deciding whether *Slattery* was correctly decided, Member Raudabaugh would find reasonable cause to believe that the grievance constitutes a claim for work in the circumstances of this case.

¹¹ *Teamsters Local 158 (Holt Cargo)*, supra; *Longshoremen ILA Local 1291 (Holt Cargo)*, supra.

¹² See *Carpenters Los Angeles Council (Swinerton & Walberg)*, 298 NLRB 412, 414 (1990); *Operating Engineers Local 3 (Levin-Richmond Terminal)*, 299 NLRB 439, 441 (1991).

these circumstances, we find reasonable cause to believe that Section 8(b)(4)(D) has been violated.¹³

Finally, the parties have stipulated that there exists no agreed-on method for voluntarily adjusting the dispute. Accordingly, we deny Local 1291 ILA's motion to quash the hearing and find that the dispute is properly before the Board for determination.

E. Merits of the Dispute

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of this dispute.

1. Certification and collective-bargaining agreements

Neither Local 724 IAM nor Local 1291 ILA has been certified by the Board as bargaining representative of the employees involved in this dispute.

Holt has had a collective-bargaining relationship with Local 724 IAM for more than 30 years.¹⁴ The contract in effect from April 1, 1988, to October 1, 1991, provides that Local 724 IAM is the "sole and exclusive bargaining agency" for all the Employer's employees listed in "Schedule A" of the agreement.¹⁵ The parties' October 1, 1991, to October 1, 1995 contract similarly recognizes Local 724 IAM's exclusive representative status over all employees in the classifications of, inter alia, trailer and maintenance mechanics. The 1991-1995 contract specifies that the duties of trailer and maintenance mechanics include diagnosing, repairing, and replacing container and chassis frame structures.

Holt is also bound to an agreement with Local 1291 ILA through its membership in the PMTA. PMTA is the collective-bargaining representative for an association of employers engaged in the warehousing and shipping industry in the Port of Philadelphia and vicinity. Among the agreements to which PMTA is bound

¹³ In view of our finding that Local 724 IAM's threats arguably violated Sec. 8(b)(4)(D), we need not decide whether Local 1291's grievance also did so.

¹⁴ *Longshoremen ILA Local 1291 (Holt Cargo)*, supra, 301 NLRB 394, 395.

¹⁵ "Schedule A" lists the job classifications for first class and mechanic "B" truck mechanics; first class and mechanic "B" trailer mechanics; first class and mechanic "B" forklift mechanics; first class and mechanic "B" maintenance mechanics; tire repairmen; and utility mechanics or trainees.

is a 1990–1994¹⁶ Mechanics', Lockermen's, Gearmen's, Crane Operator's, Truck Drivers' and Container Maintenance and Repairmen's Agreement (Mechanic's Agreement). The Mechanic's Agreement covers:

all mechanics, lockermen and gearmen, who work on longshoremen's equipment, including those who do rigging, crane operators, and truck drivers who haul longshoremen and stevedoring equipment and container Maintenance and Repairmen who are employed by members of the Philadelphia Marine Trade Association.

The "Mechanics' Agreement" further provides that:

Adding "Container Maintenance and Repairmen's" to this [Agreement] is made with the following understanding[]: (i) ILA recognizes that it will not change existing jurisdiction—Example: Packer Avenue Marine Terminal.

The 1989–1991 and 1991–1995 contracts binding Holt and Local 724 IAM arguably encompass the disputed work. Similarly, the jurisdictional language in the Mechanic's Agreement between Holt and Local 1291 ILA includes the disputed container maintenance and repair work. Although the Mechanic's Agreement additionally includes language which may preclude Local 1291 ILA's claim to this work at the Packer terminal,¹⁷ this is a matter of contract interpretation that we need not resolve in light of our award below. We will treat Local 724 IAM as well as Local 1291 ILA as having contract provisions arguably covering the disputed work, and this factor as favoring neither group of employees.

2. Employer preference

The Employer prefers to use employees represented by Local 724 IAM to maintain and repair chassis and containers at the Packer terminal rather than employees represented by Local 1291 ILA. Therefore, this factor favors an award of the disputed work to employees represented by Local 724 IAM.

3. Employer past practice

Since beginning operation at the Packer terminal in April 1989, the Employer has always used its Local 724 IAM-represented employees to maintain and repair chassis and containers. Accordingly, this factor favors

an award of the disputed work to employees represented by Local 724 IAM.

4. Area practice

The record indicates that ILA- and IAM-represented mechanics maintain and repair chassis and containers at various piers throughout the Port of Philadelphia. See also *Teamsters Local 158 (Holt Cargo)*, supra; *Machinists Local 724 (Delaware Stevedores)*, 297 NLRB 1036 (1990). Therefore, we find that the factor of area practice is inconclusive.

5. Economy and efficiency of operations

Mechanics represented by Local 724 IAM are full-time employees available to provide Holt with around-the-clock service. Local 1291 ILA-represented employees are available for hire on a casual basis for shifts of 8 to 12 a.m. or 1 to 5 p.m. Holt contends that it can maintain a continuity in manpower using the IAM-represented work force; conversely, Local 1291 ILA-represented mechanics could change with each shift. Holt further asserts that it can cross-utilize Local 724 IAM-represented mechanics in its various mechanical jobs, but not Local 1291 ILA-represented employees. Finally, when Holt needs additional mechanics for Packer Avenue chassis and maintenance repair and maintenance work it can bring IAM-represented mechanics from Gloucester City and return them to the New Jersey terminal when they are no longer needed. We find that the factor of economy and efficiency of operations favors an award of the disputed work to employees represented by Local 724 IAM.

6. Relative skills

Mechanics represented by Local 724 IAM have performed all the Employer's maintenance and repair work on chassis and containers at its Gloucester, New Jersey facility since May 1967. Historically, Local 724-represented mechanics have performed identical work at the Packer terminal. Mechanics represented by Local 1291 ILA have also performed this work at the Tioga terminal in the Port of Philadelphia. Therefore, relative skills do not favor an award of the disputed work to employees represented by either Union.

7. Gain or loss of employment

Employees represented by Local 724 IAM currently perform the work in dispute at the Packer terminal. According to the record testimony, an award of the disputed work to Local 1291 ILA-represented employees would result in loss of employment for 30 to 35 IAM-represented mechanics. Conversely, an award of the disputed work to employees represented by Local 724 IAM would cause no loss of employment for Local 1291 ILA-represented employees because the latter are not used by Holt to perform the disputed

¹⁶This agreement was originally in effect from October 1, 1986, through September 30, 1989. It was later extended, without relevant change, from October 1, 1989, to November 30, 1990, and from December 1, 1990, to September 30, 1994.

¹⁷See *Longshoremen ILA Local 1291 (Holt Cargo)*, supra, 301 NLRB 394, where the Board stated, in dictum, that the language in the "Mechanics' Agreement" constituted an "acknowledgement by Local 1291 ILA that it would not attempt to expand its jurisdiction at Packer Avenue to include container and chassis repair." Id. at 396.

work. We find that this factor favors Local 724 IAM-represented employees.

Conclusions

After considering all the relevant factors, we conclude that employees represented by Local 724 IAM are entitled to perform the work in dispute. We reach this conclusion by relying on the factors of employer preference, past practice, economy and efficiency, and gain or loss of employment. In making this determination, we are awarding the work to employees represented by Local 724 IAM, not to that Union or its members.

Scope of the Award

Holt requests that the Board issue a broad determination awarding all chassis and container maintenance and repair work that it performs, or may later perform, within the Port of Philadelphia to Local 724 IAM-represented employees. Holt argues that Local 1291 ILA has a history of not respecting the Board's 10(k) awards and processes and will continue to seek the disputed work as it did here when Holt transferred the work from Gloucester City to the Packer terminal.

For a broad determination to be appropriate, the Board requires evidence that: (1) the disputed work has been a source of controversy in the relevant geographic area and that disputes may recur; and (2) the charged

party has a proclivity to engage in unlawful conduct in order to obtain work similar to that in dispute. *Bricklayers (Sesco, Inc.)*, supra. Although the disputed work has been a recurrent source of controversy in the Port of Philadelphia, there is no showing that Local 1291 ILA has a proclivity to engage in unlawful conduct to obtain this work. Thus, in *Teamsters Local 158 (Holt Cargo)*, supra—which resulted in a 10(k) award of Gloucester City chassis and maintenance and repair work to Local 724 IAM—Local 1291 ILA was neither alleged nor found to have engaged in conduct violating Section 8(b)(4)(D).

In these circumstances, we find insufficient grounds to issue a broad determination. The determination is limited to the controversy that gave rise to this proceeding.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

Employees of Holt Cargo Systems, Inc., represented by Local Lodge 724 of the International Association of Machinists and Aerospace Workers, AFL-CIO, are entitled to perform the work of maintenance and repair of chassis and containers for Holt Cargo Systems, Inc. at the Packer Avenue Marine Terminal in Philadelphia, Pennsylvania.